

### TAHOE REGIONAL PLANNING AGENCY

308 Dorla Court Elks Point, Nevada October 29, 1997 P.O. Box 1038 Zephyr Cove, Nevada 89448-1038

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William F. Caton

Secretary, Federal Communications Commission

1919 M St. N.W.

Washington D.C. 20554

Dear Mr. Caton:

SUBJECT: MM DOCKET NO. 97-182

PREEMPTION OF STATE/LOCAL ZONING AND LAND USE RESTRICTIONS ON SITING AND CONSTRUCTION OF BROADCAST STATION TRANSMISSION FACILITIES



The Tahoe Regional Planning Agency (TRPA) submits the following comments on the proposal to preempt state and local zoning and land use restrictions on the siting, placement and construction of broadcast station transmission facilities (MM Docket No. 97-182). Because of TRPA's unique status as a bi-state regional agency, TRPA may not be affected by the proposed preemption. However, to avoid any ambiguity, TRPA supports the amendment suggested by the New Jersy Pinelands Commission in their letter dated October 29, 1997 or, in the alternative, clarification by the FCC that the proposed rule would not preempt TRPA.

The Tahoe Regional Planning Agency (TRPA) was created in 1969 through the enactment of the Tahoe Regional Planning Compact (Pub. L. 91-148, 83 Stat. 360). The Compact was enacted by the States of Nevada and California, and ratified by Congress under the Compact Clause of the U.S. Constitution. In 1980, the Compact was extensively amended (Pub.L. 96-551, 94 Stat. 3233; Calif. Gov't Code Sec. 66801; Nev. Rev. Stats. 277.200).

The Tahoe Region encompasses Lake Tahoe, one of the clearest large subalpine lakes in the world. Background materials are enclosed. The Tahoe Region straddles the state line between California and Nevada in the Sierra Nevada Mountains. In adopting and ratifying the Compact, the States and Congress found, among other things, that,

- "(3) The "region exhibits unique environmental and ecological values which are irreplaceable ...
- (5) Increasing urbanization is threatening the ecological values of the region and threatening the public opportunities for use of the public lands...
- (6) Maintenance of the social and economic health of the region depends on maintaining the significant scenic, recreational, educational, scientific, natural and public health values provided by the Lake Tahoe Basin ...
- (7) There is a public interest in protecting, preserving and enhancing these values for the residents of the region and for visitors to the region..."

No. of Copies rec'd List ABCDE Mr. William F. Caton October 29, 1997 Page 2

The Compact goes on to state that the federal government has a responsibility to preserve scenic and natural areas and manage the resources of the region to protect environmental and recreational values. TRPA's mandate under the Compact is to adopt environmental threshold carrying capacities for certain resources, including scenic resources, and to adopt and implement a regional plan and ordinances which achieve and maintain those thresholds.

In accordance with that mandate and after nearly three years of litigation, regional consensus was reached on a regional plan and implementing ordinances. Those ordinances include a limitation on the placement of certain uses, including transmission facilities, and a limitation on the height of such facilities. These ordinances have been adopted and enforced by TRPA under its authority as a bi-state regional agency. As such, the ordinances are neither state nor local laws.

Because TRPA's zoning and land use restrictions are adopted under the authority granted to TRPA in the Compact, which is a federal law, TRPA's zoning and land use restrictions are not state or local laws and therefore should not be preempted by the proposal under consideration by the FCC. However, since TRPA is a unique entity, incorporating an exception as suggested by the New Jersey Pinelands Commission, would avoid any ambiguity regarding the applicability of the proposed rules to TRPA and similar federally-mandated regional entities, such as the Columbia River Gorge Commission and the New Jersey Pinelands Commission.

TRPA believes that it would be counter to the objectives of the Tahoe Regional Planning Compact, as enacted by Congress, to create any ambiguity regarding the enforceability of TRPA's Regional Plan and ordinances. Congress has recognized the scenic and recreational values of the Tahoe Region and provided for their preservation and protection.

In summary, given TRPA's status as a bi-state regional agency created by California, Nevada, and Congress, under the Compact Clause, we do not believe it is appropriate to preempt, or create an inference of preemption, with respect to TRPA's Regional Plan and ordinances. Therefore, we ask that the amendment suggested by the New Jersey Pinelands Commission be incorporated into the rules or, in the alternative, that the FCC clarify that the proposed regulation would not preempt TRPA.

Thank you for your consideration of these comments. If you have any questions regarding this matter, please contact me at (702) 588-4547 Ext. 223 or Special Projects Attorney, Susan Scholley at Ext. 238.

Sincerely,

James W. Baetge Executive Director

JWB/ss

Enclosures

c: Susan Scholley
Terrence D. Moore



### "It is found and declared that:

The waters of Lake Tahoe and other resources of the region are threatened with deterioration . . . which endangers the natural beauty and economic productivity of the region.

The region exhibits unique environmental and ecological values which are irreplaceable. Increasing urbanization is threatening the ecological values of the region and threatening the public opportunities for use of the public lands.

In order to preserve the scenic beauty and out-door recreational opportunities, there is a need to insure an equilibrium between the region's natural endowment and its manmade environment."

Tahoe Regional Planning Compact, 1980.

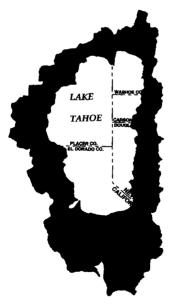
### **Tahoe Regional Planning Agency**

The Tahoe Regional Planning Agency (TRPA) was created in 1969 when the California and Nevada legislatures adopted the Tahoe Regional Planning Compact. The Compact, as amended in 1980, defines the mission of TRPA: "... to enhance governmental efficiency and effectiveness in the Region; establish environmental threshold standards for the Region; and adopt and enforce a Regional Plan to attain the threshold standards, while providing for orderly growth and development consistent with the standards."

### To Enhance Governmental Efficiency and Effectiveness

The TRPA Governing Board is made up of 15 members; seven from California, seven from Nevada; and one non-voting Presidential appointee.

Six members, who are locally-elected officials or their designees, represent the units of local government. The Compact provides for a majority of the seats to be held by citizens from outside the Tahoe Region (representing at-large voters from the two states) so the Board could focus on issues not only of local interest, but also of state-wide and nation-wide interest.



#### TRPA's Regional Jurisdiction

TRPA was created as a regional agency because the Lake Tahoe watershed crosses a number of state and local political boundaries. A regional agency like TRPA champions the environmental cause. and provides a focal point for networks of technical experts. It provides consistent environmental standards for the Region and, thus helps control the cumulative effects of additional development.

## To Establish Environmental Threshold Standards for the Region

The threshold standards are definitions of environmental quality which we hope to achieve in the Tahoe Region. The Governing Board has adopted threshold standards, also called carrying capacities, in nine areas.

- water quality
- · wildlife habitat
- · air quality
- noise
- · soil conservation
- scenic resources
- vegetation
- recreation
- fish habitat

#### To Adopt and Enforce a Regional Plan to Attain the Threshold Standards

The Regional Plan is made up of several documents including the Goals and Policies, Plan Area Statements (land use maps), Code of Ordinances, Regional Transportation/Air Quality Plan, Federal Clean Water Act Water Quality Improvement Plan, Scenic Quality Improvement Program and others.

The TRPA Governing Board has sole authority to amend the Regional Plan which guides policy and provides the framework for the daily operations of the agency. The goal of the Regional Plan is attainment of the nine threshold standards.

### To Provide for Orderly Growth and Development With the Standards

TRPA sees itself primarily as an environmental agency, but recognizes the interdependence of environmental, economic and social well-being in the Tahoe Region. Environmental groups, property rights advocates, business interests and numerous government agencies involved at Lake Tahoe agree that tourism and successful locally-owned businesses are key to economic vitality and are dependent upon the attractiveness of the region's environment. The Regional Plan allows for a controlled rate of residential, commercial, and recreational growth, the impacts of which are controlled through mitigation measures.

### The TRPA Mission Statement:

The Tahoe Regional Planning Agency leads the cooperative effort to preserve, restore, and enhance the unique natural and human environment of the Lake Tahoe Region.



# TRPA Governing Board Membership:

South Lake Tahoe City Council El Dorado County Board of Supervisors Placer County Board of Supervisors Governor of California Appointees (two seats) California Assembly Speaker Appointee California Senate Rules Committee **Appointee** Douglas County **Board of Supervisors** Washoe County Board of Commissioners Carson City Board of Supervisors Nevada Governor Appointee Nevada Department of Conservation and Natural Resources Nevada At-Large Presidential Appointee

# THE REGIONAL PLAN FOR THE LAKE TAHOF BASIN

The 1987 Regional Plan takes a dual approach to achieving the threshold standards.

The regulatory approach was the strength of the plan in its early years. New regulations defined standards for growth and brought environmental impacts of new development under control.

Now that the regulatory program is in place, the emphasis has shifted to implementation of the environmental improvement program (EIP), a project-orientated investment program designed to repair the environmental damage done before the Regional Plan was adopted.

Every five years, TRPA conducts a comprehensive evaluation of the Regional Plan to measure the progress made toward threshold attainment.

#### **Environmental Improvement Program**

TRPA has identified nearly \$500 million in environmental improvements which must be made in order to achieve the threshold standards. To date, federal, state, and local governments have invested over \$80 million in soil erosion control, storm water drainage, stream zone restoration, public transit, and other improvement projects.

More recently, the private sector has become an active partner in the environmental improvement program. Private property owners and public agencies are working together to plan capital investments which will result in economic benefits for the property owners and environmental benefits for the entire Region.

Whether funded publicly, privately, or by a partnership, environmental improvement projects will be TRPA's highest priority as it strives to fulfill its mission to "lead the cooperative effort to preserve, restore, and enhance the unique natural and human environment of the Lake Tahoe Region."

#### Regulation

The Regional Plan also includes a number of regulations and other measures which control the environmental impacts of new development.

The control measures include:

- systems for classifying land capability
- · impervious land coverage restrictions
- limited grading season
- · limited allocations of development
- requirements for Best Management Practices
- mitigation of air and water quality impacts
- scenic quality guidelines
- non-degradation standards for certain habitat areas and stream improvement zones
- other threshold-related control measures

The regulatory program is administered through the project review and permit compliance process.

#### Monitoring

TRPA is a leading partner in a comprehensive program which monitors water quality, air quality, and other threshold standard indicators. The monitoring program creates a stream of data which helps indicate where adjustments are needed in the environmental improvement and regulatory programs.

Support for the monitoring effort comes from the federal government, state water resources agencies, and research departments of state universities.

#### Lake Tahoe

Elevation: 6.225 feet

Size: 12 miles wide 22 mile long 71 miles of

> shoreline 192 square

miles of surface

Maximum depth: 1.645 feet

Average depth: 1,027 feet

Nearshore water temperature: 52-55 degrees F

Size of watershed: 501 square miles

#### TRPA PARTNERSHIPS

Federal Legislative Agenda

Coordinated Transit System

Tahoe-Truckee Regional Economic Coalition

**TEAM Tahoe** 

Forest Health Consensus

Capital Finance Committee

Tahoe Coalition of Recreation Providers

Shorezone Partnership Committee

Tahoe Transportation

Streamlining

Many more . . .

#### THE PARTNERSHIP APPROACH

The TRPA Mission Statement says the agency "leads the *cooperative* effort. . ." The mission statement implies that no single entity, TRPA included, can take full responsibility for achieving the Region's threshold standards.

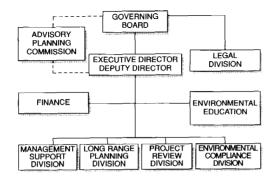
By working together in partnerships, public agencies and private interests create momentum which propels the Region forward at a pace which would not otherwise be achieved.

As the leader of the cooperative effort, TRPA identifies threshold-related projects and activities which are best achieved through a partnership approach. Because the agency is not restrained by political boundaries, TRPA can initiate formation of partnerships, facilitate the process, and, if necessary, serve as mediator.

With the creation of powerful new partnerships, we will see more exciting changes in the economic and environmental outlook for the Lake Tahoe Region.

#### ORGANIZATION AND BUDGET

The TRPA Governing Board is made up of 15 members who represent federal, state, and local constituencies (see page 3 margin). The Governing Board is advised by a 19-member Advisory Planning Commission made up of local planning officials, representatives of state and federal natural resource management agencies, and laypersons. TRPA staff is organized according to the chart below. The work program is carried out using the program management approach which requires much inter-divisional consultation and cooperation.



#### **TRPA Budget**

TRPA receives operational support from a number of sources.

Although not a state agency, TRPA submits budget requests to California and Nevada and remains accountable to the states for the wise expenditure of state funds.

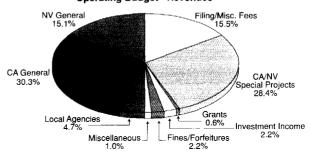
State special project funds come from sources other than the states' general funds and are used for specific programs such as environmental monitoring, data systems management, and transportation management. TRPA receives federal support, primarily in the form of grant money for which TRPA must compete and which is earmarked for special projects.

Costs of the agency's project review and compliance functions are partially recovered from permit filing fees paid by project applicants.

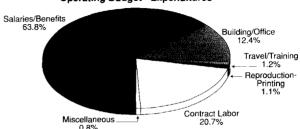
See the chart below.

The pie charts represent the Fiscal Year 1995-96 budget. Percentages may vary slightly from year to year.

#### Operating Budget - Revenues



#### **Operating Budget - Expenditures**



#### **TRPA**

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